

**IN THE UNITED STATES DISTRICT COURT  
OF THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

**GWENDOLYN SUE LEMLEY,** §  
**Individually, as Heir and Legal** §  
**Representative of the ESTATE OF** §  
**RUSSELL DON LEMLEY, (DECEASED)** §  
**and Next Friend of TANNER DEAN** §  
**LEMLEY and GAIL LEMLEY (Minors)** §  
**Plaintiffs** §

**V.** §

**No. 5:05CV141**


§  
**KBT, INC., KIRK NATIONALEASE CO.** §  
**and TED ALAN GLAZE** §  
**Defendants** §

**MEMORANDUM ORDER**

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Substituted Report of the Magistrate Judge which contains her proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. No objections were filed to the Report and Recommendation. The Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct. Therefore, the Court hereby adopts the Report of the United States Magistrate Judge as the findings and conclusions of this Court. Accordingly, it is hereby

**ORDERED** that The Estate of Russell Don Lemley's Motion to Dismiss on the Basis of a Specific Negative Averment (Docket Entry # 25) is **DENIED AS MOOT**.

**SIGNED this 10th day of February, 2006.**

  
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DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE